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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/927,892

Applicant(s)

STEPHEN ET AL.

Examiner

Josiah C. Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 6/23/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. Receipt of applicant's amendment filed 6/23/03 is acknowledged.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 29 and 65-78 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 recites the limitation " the first portion of the receiver is biased into contact with the inner surface of the receiver " in lines 8-9. There is insufficient antecedent basis for this limitation in the claim. Applicant has not identified a first portion of the receiver. Further it is not clear from the specification how the receiver could be biased into the inner surface of itself. As best can be determined it appears applicant intended to recite --the first portion of the projection-- and has been regarded as such for the purpose of an examination on the merits.

Claims 65 and 71 each recite in lines 2-3 "the lower frame member defining a receiver." However, this limitation lacks antecedent basis as at this point in the claims, as applicant has only identified an upper frame member. Did applicant intend to recite that the upper frame member defines a receiver? These claims later introduce in line 5 that the assembly includes a lower frame member. If applicant actually intended to recite that the lower frame member

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defines a receiver why would that limitation not appear after defining that the assembly includes a lower frame member? The examiner cannot determine if applicant intended the lower frame member or upper frame member to define a receiver. As a result, the scope of claims 65-78 cannot be determined and these claims have not been further examined on the merits. The non-application of prior art to these claims should not be regarded as an indication of allowable subject matter.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Home* (US # 5,140,973) (cited by applicant) (hereinafter "*Home '973*") in view of *Home* (US # 5,623,866) (cited by applicant) (hereinafter "*Home '866*").

*Home '973* discloses in Figures 1-4 a barbecue grill cart and frame assembly including a pre-formed upper assembly having upper leg portions (31) and a pre-formed lower assembly having lower leg portions (32) wherein the leg portions of the lower assembly include a projection (upper portion of leg 32) having a first portion (i.e. outer surface of projection 32) and a second portion (i.e. inner surface of projection 32) and the upper assembly includes a receiver such that the projection of leg (32) is received within receiver of the upper assembly (see Fig. 3).

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*Home* '973 also discloses a biasing and locking means in the form of pin fastener (41) that serves to maintain the projection of a lower leg (32) in contact with an inner surface of the receiver of a leg of the upper assembly by projecting through apertures (310 or 320) (see Fig. 3). The examiner regards the upper portion of leg (32) and the receiver portion of upper leg (31) to constitute terminal ends.

In regard to the limitation of the claims relating to a cooking chamber supported on the upper assembly, it would have been obvious to a person of ordinary skill in the art that the barbecue cart and frame assembly disclosed by *Home* '973 is intended to support a cooking chamber as a cooking chamber is necessary to the function of *Home* '973 as a barbecue grill. Such a cooking chamber is well known in the art (see item 2 of *Home* '866).

In regard to claim 13, and the limitation after amendment that the biasing means is now limited to a threaded fastener. While this claim is now limiting to a threaded fastener, applicant previously identified in the claim that the use of a pin fastener and threaded fastener as functionally equivalent. Additionally, applicant identifies in the specification on p. 14, lines 15-18, that a pin fastener and threaded fastener are alternative fastening means. Therefore, the examiner considers the pin fastener identified in *Home* '973 as the obvious equivalent of the threaded fastener of applicant's claim.

In regard to the limitations of the claim relating to reversing the location of the projections such that the upper assembly includes a projection and the lower assembly a receiver. Applicant discloses in the specification that locating the projection receiver in either of the upper and lower assembly are equivalent alternatives. Therefore, to simply reverse the projection and receiving portions of *Home* '973 is not regarded as patentably distinct over the prior art of

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record. Further, *Home* '866 shows a lower and upper assembly wherein the lower assembly forms a receiving portion for a projection from the upper assembly (see Fig. 5). It would have been obvious to a person of ordinary skill in the art at the time the invention was made that reversing the projection and receiving portions would serve as equivalent means for allowing the upper and lower assemblies to be joined to one another.

In regard to the limitations of the claims relating to the use of cast materials for portions of the frame assembly and cooking chamber, OFFICIAL NOTICE is taken as to the well known use of cast materials, such as cast metal, in forming barbecue grill assembly portions.

*Home* '973 does not disclose that the upper and lower leg portions have wall surfaces that remain in planar alignment.

*Home* '866 teaches a barbecue grill and frame assembly of the same field of endeavor as *Home* '973 wherein the assembly of *Home* '866 includes upper (11) and lower assemblies (3) with portions that fit together such that outer wall surfaces remain in planar alignment (see Fig. 6).

Therefore, in regard to claims 1-64, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the assembly of *Home* '973 to incorporate the means for joining upper and lower assemblies such that outer walls of the assemblies remain in planar alignment as shown in *Home* '866 as this arrangement allows the lower assembly to form a support surface such that the upper assembly is supported on the lower and maintains these assemblies in contact with one another (see *Home* '866, Figs. 5 and 6).

***Response to Arguments***

6. Applicant's arguments filed 6/23/03 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as noted in the prior Office Action and as noted in item 5 above the reasons for incorporating the joining mechanism of *Home '966* in *Home '973* is to allow the lower assembly to form a support surface such that the upper assembly is supported on the lower and maintains these assemblies in contact with one another. As best can be determined, applicant did not address this reason for combining.

Applicant also argues that it is error to proposing combining the H-shaped support bracket of *Home '866* with the assembly of *Home '973*. However, the examiner is not proposing such a modification. *Home '866* is cited to show that it is known in the art that the fitting engagement wherein pieces of the leg assemblies of a barbecue grill may be arranged such that they are in planar alignment is known in the art. The examiner is not proposing incorporating the entire H-shaped bracket assembly of *Home '866*. The examiner notes that incorporating the entire H-shaped bracket assembly of *Home '866* in the assembly of *Home '973* is not necessary as *Home '973* discloses its own H-shaped connecting means for the legs (note supporting beams 6

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and 8 in *Home* '973). Applicant further contends the leaf spring (4) of *Home* '973 would not function if combined with *Home* '866. However, it is noted that, while not shown in *Home* '866, hole (31) receives a spring-loaded ball (112) (see *Home* '866, col. 2, lines 23-25) that operates in a similar manner to that of *Home* '973. Therefore, the examiner does not concur that *Home* '973 is un-combinable with the teachings of *Home* '866.

Applicant also argues that none of the references show a first portion of the projection biased into contact with the inner surface of the receiver. However, as shown in Fig. 3 of *Home* '973, the outer surface of leg (32) is in contact with inner surface of receiver (31). Further, the spring (4) is supplying some degree of biasing force to leg (32). Therefore, the examiner considers that the projection portion of leg (32) is biased into contact with the inner surface of receiver (31).

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
September 8, 2003

  
JOSIAH COCKS  
PATENT EXAMINER  
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